

REMARKS

Claims 1-3, 5, 8, 9, 11-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over 6,156,419 to Brugger et al. (6,156,419) in view of Malhotra (5,589,277). Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brugger et al. in view of Malhotra as applied to claims 1-3, 5, 8, 9, 11-19 and 21, and further in view of Floegel et al. (6,284,339), Uemura et al. (6,153,305) or Kasahara et al. (6,165,606).

Common Inventor/Common Ownership

Examiner states that Applicant may not rely on common ownership of the Brugger et al. reference to overcome the 103(a) rejection in this case because this application is an RCE of an application filed prior to November 29, 1999. Applicant respectfully disagrees.

The Cooperative Research and Technology Enhancement Act of 2004 (CREATE Act) redesignated the former 35 U.S.C. 103(c) to 103(c)(1) and made this provision effective for all applications in which a patent is granted on or after December 10, 2004, including applications filed prior to November 29, 1999. [MPEP 706.02(1)1].

Since the present application was filed prior to November 29, 1999, the rejections under 35 U.S.C. 103(a) can be overcome by showing that the subject matter of the Brugger et al. reference and the present invention were, at the time the invention was made, owned by the same person or subject to an

obligation of assignment to the same person. [MPEP 706.02(1)1 and 706/02(1)(2)].

The Brugger et al. reference was filed on April 30, 1998 and issued on December 5, 2000 as U.S. Patent No. 6,156,419. The Brugger et al. patent is assigned to ILFORD Imaging Switzerland GmbH as is the present invention. (See copy of Assignment recorded in the USPTO on November 9, 1999 at Reel 010370 and Frame 0609). At the time the invention was made (June 18, 1998), both Brugger et al. and the present invention were both commonly owned by ILFORD Imaging Switzerland GmbH. Thus, the rejections of the claims as obvious over Brugger et al. should be withdrawn.

Since the Brugger et al. reference is no longer considered prior art, the rejections of the claims in view of Brugger et al. in combination with the secondary references are deemed moot.

In view of the foregoing arguments, Applicant submits that this application is now in condition for allowance. No new matter has been introduced by this Amendment. Reconsideration of this application and allowance of Claims 1-3, 5, 8, 9 and 11-21 are hereby requested. If a telephone interview would be useful to advance this case, then the Examiner is invited to telephone the undersigned.

Respectfully submitted,
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